

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 155 / 2014

Commissioner of Income Tax (Central) Jaipur

-----Appellant

Versus

Shri Vishnu Prakash Sharma, Prop. M/s Shyam Murti Emporium,  
1994, Shyam Bhawan, IV Crossing, Khejaro Ka Rasta, Chandpole  
Bazar Jaipur.

-----Respondent



For Appellant(s)

: Mr. Anil Mehta with

Mr. Sammer Sharma

For Respondent(s)

: Mr. Naresh Gupta

**HON'BLE MR. JUSTICE K.S. JHAVERI  
HON'BLE MR. JUSTICE VIJAY KUMAR VYAS**

**Judgment**

**12/09/2017**

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has partly allowed the appeal of the assessee modifying the order of CIT(A) and the AO which has decided against the assessee.

2. While admitting the appeal, this court framed the following substantial questions of law on 07.12.2016:-

"1. Whether the order of ITAT is perverse in deleting the addition of Rs.1,03,44,198/- on account of excess stock and unexplained investment in shop, despite the fact that the said amount was specifically surrendered by the assessee during the course of search in statements recorded u/s 132 (4) of the Act and so also by a letter dated 22.12.2009, and specific finding has been recorded by the CIT(A) in paras 4 and 5 respectively of his order?

2. Whether on the facts and in the circumstances of the case and in law, the ITAT is right in holding

that interest u/s 234A&234B of the IT Act should be counted from the date when the last copies of the documents seized during the course of search were available to the assessee?"

3. Counsel for the appellant Mr. Mehta has taken us to the order of AO and contended that while considering the case of assessee the Assessing Officer has taken into consideration the statement recorded by the competent authority and thereafter considering the unexplained stock and immovable property has assessed the income as under:-

**"Addition on account of unexplained investment in stock and immovable property:**

The assessee made a surrender of Rs.1,02,25,168/- as per his letter dated 22.12.2009 filed on 22.12.2009.

"kindly refer to the assessment proceedings in progress in the case of captioned assessee.

Without prejudice to the submissions made earlier and the material available on record the following facts are submitted for your kind perusal and record.

During the course of search operation conducted on 10-11.11.2008 at the business and residential premises of the assessee's family and the statements of the assessee were recorded. In these statements the assessee had admitted an additional income of Rs. 1,20,20,168/- relating to the assessment year under consideration which had been based on the information confronted by the department related to the search conducted in the assessee's case. Though no concealment of income is admitted however to purchases the peace the figure has been worked out as under:

On account of stock

91,44,118.00

Investment in Axis Mall

28,76,050.00

1,20,20,168.00

Less: income surrendered while filing  
the return of income

A.Y. 2005-06 3,10,000.00

A.Y. 2007-08 4,55,000.00

A.Y. 2008-09 10,30,000.00

17,95,000.00

Additional income

1,02,25,168.00

This figure of Rs. 1,02,25,168/- has been work out on the basis of the figures informed by the department during the search stated above.

The income offered of Rs. 1,02,25,168/- in aforesaid manner is subject to the conditions that no penalty be initiated and levied and further that no addition would be made on account of loose papers found during the course of search as the assessee does not admit any understatement or concealment of income in the original return filed and the additional income accepted is only to purchases the peace and to avoid prolonged litigation particularly when the assessee is seriously engaged in business and is pressed of time."

He further contended that after taking into consideration the above facts additional income was made. The same was confirmed by the CIT(A) holding as under:-

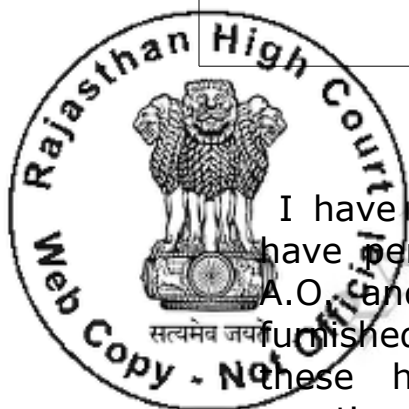
On merits it is submitted that the assessee has maintained all the required details and books of accounts were also audited as per the requirement of the I.T. Act, 1961.

The books of accounts so maintained in the normal course of business were also tendered for verification before the Ld. AO as and when desired which is also clear from the notices issued u/s 142(1) (APB 51) and its reply dated 24.12.2009 (APB 1-50). Further the confirmation and other details as desired by the Id. AO vide letters dated 18.12.2009 (APB-86) were submitted vide letter dated 22.12.2009 (APB 61-83).

The main allegation of the Ld. AO regarding the non acceptance of stock details submitted for the prriod from 01.04.2007 to 10.01.2008 was that the stock items as per assessee's working sheet are 781 and as per stock sheet prepared by the Income Tax Department during the course of search are '1402' however, the quantity submitted by the assessee was not properly appreciated by the Ld. AO who making total of the S.No. The actual quantity as submitted by the assessee and as quantify by the department during the course of survey are as under:  
As per Assessee:

S.No.	Name of the firm	No. of items	Total value of stock
1.	Shyam Moorti Emporium	272	1436550.00
2.	Shyam	402	536455

	Exports		0.00
3.	Shyam Moorti Kala	688	242980 0.00
4.	Shyam Moorti Museum	484	367658. 00
5.	Shyam Moorti Palace	390	245133 5.00
	Total	2239	120498 93.00



I have considered the submission of the Id. A.R, and have perused the assessment order, remand report of A.O. and the material on record. The appellant has furnished common submission for ground no. 1 to 4 and these have been considered together. As already mentioned it is undisputed that the appellant is the controlling person of Radheshyam Sharma Sub group. During the course of search, statement of the appellant was recorded u/s132(4) and the appellant was asked to furnish explanation of the physical inventory of the stock found so prepared valuing Rs.1,17,30,918/- in question no.25. In answer to that he has averred has under:-

"I accept that stock of our all the four firms is kept in this godown (Khejaron ka Rasta) and godown situated in new colony. The inventory of the stock was done in our presence and the cost value was also taken as stated by us for which I completely agree. The total stock physical found is found Rs.1,17,30,918/-, whereas the book stock is only Rs.25,86,800/-. Therefore I admit that physical stock of our firm is in excess with the book stock by an amount off Rs.91,44,118/-. I admit the excess stock to be acquired out of undisclosed income and offered it for taxation."

At the end, it has also been mentioned that "I have given the above statement in my full senses and after due consideration. I have read my statement. I am in full agreement with these statements."

"Later on, the appellant kept mum for about one and half year. The appellant not only kept mum but even did not file the return of income within the prescribed time u/s 139(1). The A.O. has to issue u/s 142(1) requiring the assessee to file his return of income but appellant failed to file the return of income. In view of the failure on the part of the appellant to file the return of income, the A.O. has issued notice u/s 142(1) dated 19.10.09 requiring the appellant to file various details but appellant still failed to file any detail. One more notice



dated 23.10.2009 was issued to file explanation and details in view of the material seized and admission made by the appellant during the course of search but same was also not complied with. It only infers that the appellant was totally avoiding and evading complying with the notices of the A.O. and also completely avoiding and evading filing return of income. Lastly the return of income was filed on 18.11.09, declaring income of Rs. 16,60,610/- without including the investment in excess stock surrendered during the search."

5. He contended that the view taken by the tribunal is contrary to law and required to be reversed more particularly when the tribunal has reversed the finding without assigning any reason. It is contended that the Tribunal while considering the same has not adverted to the argument advanced by D.R. and allowed the appeal in favour of the assessee.

6. Counsel for the respondent Mr. Gupta has taken us to the observations made by the A.O. which reads as under:-

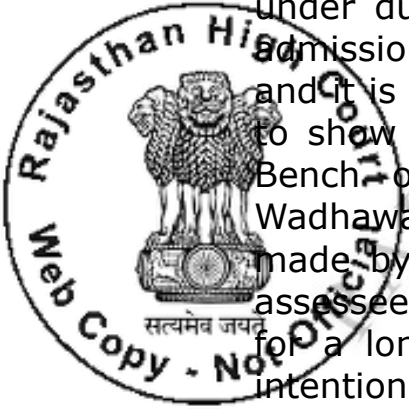
"In view of the non-compliance and non-cooperative attitude of the assessee a proposal for launching of prosecution proceedings u/s276 CC of the Act was sent on 11.11.2009 to the CIT, Central, Jaipur."

7. In view of non-compliance therefore, the notice which was sent on 11.11.2009 the assessee has compelled to surrender himself and therefore, he has surrendered. However, he has produced all documents which are now produced today before this court and also taking into consideration the statement which are recorded and the material which are available on record, the Tribunal has held as under:-

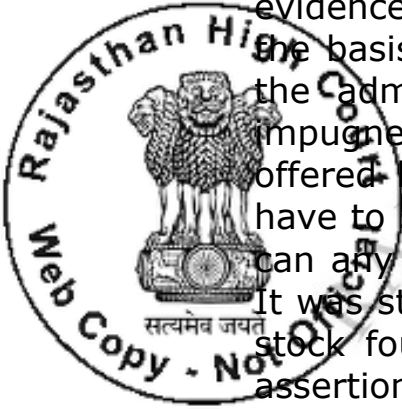
**2.6** Per contra the Ld. DR has supported the orders of the authorities below and has submitted that the assessee himself has made surrender on account of excess stock in the statements recorded during the course of search proceedings and also before the assessing authority during the course of

assessment proceedings and it is a calculated attempt to escape the tax liability without in any manner proving that the statements were given under duress or they were obtained by coercion. Therefore, as per Id DR the stand taken by the assessee should not be accepted and should be rejected.

2.7 After carefully considering the rival submissions on the issue and having gone through the records and the precedents relied upon, we find force in the argument of the Ld. AR that at the time of search the confessional statements recorded of the assessee cannot be said to be free and independent statements. Any admission made in ignorance of legal rights or under duress cannot bind the maker of admission and mere admission cannot be bedrock or foundation of an assessment and it is always open to the assessee who made the admission to show that what he admitted was not correct. The Nagpur Bench of the ITAT in the case of DCIT Vs. Sadhuram Wadhawani reported in 81 TTJ 839 has held that the addition made by the AO was merely based on the statement of the assessee recorded under s. 132(4) and the search continued for a long time without any real purpose indicates that the intention was to obtain disclosure of income, the disclosure cannot be considered as a voluntary disclosure. Assessee having retracted the statement successfully by adducing sufficient corroborating evidence to show that the said statement was not voluntary and that the admission made therein was incorrect. The impugned addition made by the AO on that count is not sustainable. The Jodhpur Bench of ITAT in the case of Ashok Kumar Soni Vs. ACIT reported in 26 TW 135 has held that the admission made in the statement recorded u/s 132(4) cannot be said to have the same value as an admission when it stands retracted with evidence later on. The Hon'ble Supreme Court in the case of DIT Vs. Pooranmal and Sons reported in 96 ITR 390 has held that confession cannot be made foundation of the assessment. The Hon'ble Apex Court in the case of Pullangode Rubber Products Co. Ltd. V/s State of Kerala & Anr. 1972 CTR (SC) 253 = (1973) 91 ITR 18 (SC), has held that an admission in a statement recorded on oath is an extremely important piece of evidence but it cannot be said that it is conclusive and it is always open to the person who made the admission to show that it is incorrect. In the present case the assessee though had accepted the excess stock in the statements recorded u/s 132(4) of the Act at the time of search however while filing the return of income he did not include that amount in the income declared which by itself is a retraction to the statements and when during the course of assessment proceedings he was once again compelled by the assessing authority then a conditional offer was made where he offered the additional income on account of excess stock to purchase the peace of mind with a further condition that penalty should not be levied on such additional income and the AO did not accept his offer, the assessee on the next very day, submitted the necessary reconciliation and other relevant details alongwith the books of accounts to the AO for verification and claimed that there was no discrepancy in the



stock as at the time of search the books of accounts were incomplete and after completion of the same the inventory sheet has been prepared and filed. The Jaipur bench of ITAT in the case of Kalindee Rail Nirmal Engg. Ltd. Vs. DCIT reported in 28 TW page 280 has held that counter proposal given by the assessee is not binding on it since it was not acted upon by the AO in its entirety and hence the assessment is not an agreed assessment. Thus, by respectfully following the above legal position in the light of the facts of the case, we are of the opinion that the assessee has duly retracted the admission made in the statements recorded during the course of search on account of excess stock with the help of the sufficient evidence and therefore, no addition could be made solely on the basis of such admission. Accordingly, we direct to exclude the admission made in the statements for supporting the impugned addition. More specifically when the reconciliation offered by the assessee has not been found to be false, we have to see as to whether de hors the confessional statements can any addition be made or sustained on merits of the case. It was stated by the Ld. AR that there is no discrepancy in the stock found during the course of search and to support this assertion a written submission has been filed, the relevant portion therefrom is being reproduced as under:



"These grounds relates to the confirmation of additions of Rs. 1,03,44,198/- [1,02,25,168 + 1,19,030] made to the total income of assessee on account of alleged excess stock of Rs. 92,63,148/- stated found during the course of search and the payment of Rs. 28,76,050/- made towards the purchase of property, as reduced by the amount of additional income of Rs. 17,95,000/- declared by the assessee in its return of income filed for various previous assessment years.

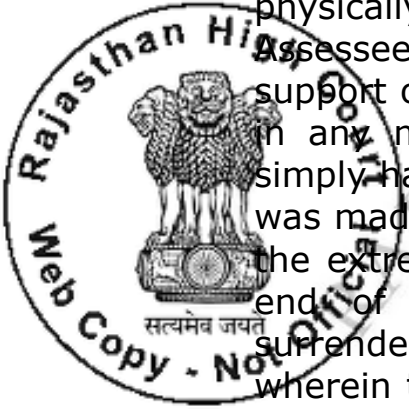
In the matter it is submitted that during the course of search operation conducted on 10- 11.01.2008 at the business and residential premises of the assessee and his family members, their statements were recorded. At the time of search total five (5) concerns were run by the assessee and his family members in their proprietorship who all were dealing in moorties and stock of all these firms was kept at premises situated at 1994, Khejdon ka Rasta, Chandpole Bazaar, Jaipur and house at new colony in mixed form. During the course of search the stock physically available at above two premises was inventorized and was valued at Rs. 1,17,30,918/- in terms of the Inventory Sheets prepared (APB 148 to 236). Since the assessee's regular books of accounts were incomplete at the time of search, on the basis of such incomplete books of accounts the stock as per books was taken at Rs. 25,86,800/- and accordingly the excess stock of Rs. 91,44,118/- (being 1,17,30,918 – 25,86,800) was worked out by the department. Besides, this certain other entries of unexplained investment in the acquisition of property at Axis Mall for Rs. 28,76,050/- was also found and was admitted by assessee. However, in the return of income filed assessee has admitted and disclosed additional income of Rs. 10,30,000/- in addition to Rs.



3,10,000/- declared in A.Y. 2005-06, Rs. 4,55,000/- declared in A.Y. 2007-08 being the investment made in the acquisition of the property at Axis Mall and had not declared any additional income on account of the alleged excess stock admitted during the course of search.

During the course of assessment proceedings it was contended that the books of accounts were incomplete at the time of search and thereafter the same were completed on the basis of the purchase and sales vouchers available with the assessee and the stock available as per books of accounts was worked out based on that there remained no difference in the physically found stock and the stock as per books of accounts. Assessee also filed the necessary explanations / evidences in support of the contentions but the Ld. AO (APB 30-79) without in any manner considering and applying his mind opted to simply harp upon the sheer contention that since the surrender was made the addition are bound to be made. Therefore under the extreme pressure of the Ld. AO, the assessee at the fag-end of the assessment proceedings made a conditional surrender vide letter dated 22.12.2009 wherein the assessee wherein the assessee has agreed to accept and pay the taxes on the additional income as admitted during the course of search to purchase the peace with clear stipulation that no penalty proceedings should be initiated in case the admission is accepted otherwise the matter may be decided on merit on the basis of the contention raised and the evidences produced which is very much clear from the opening part of the so called admission letter submitted by the assessee wherein assessee has categorically stated that (AO page 5) "without prejudice to the submission made earlier and the material available on record the following facts are submitted for your kind perusal and record." Thus the only course which was legally permissible for the Ld. AO was either to accept the so called admission in the terms indicated by the assessee in such letter or to decide the matter on merits in case the admission given by the assessee is not acceptable in toto. However, the Ld. AO fully rejecting the same insisted upon the levy of penalty therefore the assessee finally filed letter giving entire details on 24.12.2009 i.e. a day after the letter dated 22.12.2009 admitting undisclosed income (APB 30).

It may kindly be seen that the Ld. AO did not accept the offer made by the assessee by stating that the assessee is liable to pay the penalty u/s 271AAA on such additional income and without considering the merits in the reconciliation and the evidences submitted by the assessee in respect to the stock available with him as per books of accounts proceeded to complete the assessment by making total addition of Rs. 1,03,44,198/- as against the admission of Rs. 1,02,25,168/- offered by the assessee. The Ld. AO had made assessment by accepting part offer of the assessee which is favorable to him and rejected the conditions attached to it thus assessment cannot be held as an agreed assessment more particularly when it was not consistent with all the terms and conditions of



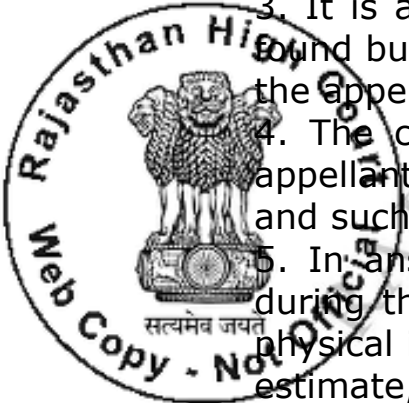


the offer made by the assessee, therefore the assessee preferred appeal before the competent authority i.e. the Ld. CIT(A), Central, Jaipur who summarily rejected the appeal of the assessee by making various observations at pages 14 to 19 of his order which are summarized as under:

1. In the statement recorded u/s 132(4) during the course of search the assessee has accepted excess stock of Rs. 1,17,30,918/- in reply to question no. 25 of his statement.
  2. The appellant failed to furnish the books of accounts and more particularly purchase vouchers before the AO. The appellant in presence of his AR's filed letter of surrender dated 22.12.2009 and offered Rs. 1,02,25,168/- for tax.
  3. It is a clear cut case where the excess stock was not only found but surrendered during the course of search and later on the appellant tried his best to escape from the tax liability.
  4. The condition of not imposing the penalty so put by the appellant is just a ploy to try to avoid further financial burden and such condition is lawfully invalid condition.
  5. In answer to Question No. 10 in his statements recorded during the course of search, the appellant had stated that no physical inventory of stock is prepared and only on the basis of estimate, details of stock as on 31st March is prepared. Further the auditors have also mentioned that regular stock register is not maintained hence it is not possible for us to provide quantitative details. Accordingly the physically inventory as per the books prepared by the assessee after the search and submitted before the AO has been rightly rejected by the AO.
- All the aforesaid allegation made by Ld. CIT(A) do not find force in the light of the submissions made herein after.

In the case of the assessee the search u/s 132 had commenced at the business and residential premises at around 7.00 A.M. on 10th January, 2008 and it was concluded in late night of 11th January i.e. after about 42 hours when the confessional statements were recorded and concluded. During the course of search the statements of assessee were recorded several times firstly at the time of initiation of search on 10.01.2008 and lastly in the late evening of 11.01.2008 when the search was concluded after repeated physical search and verification by ransacking the entire house and business places of the assessee.

From the sequence of the events and seriatim of the statements recorded, it is quite clear that they were continual statements recorded after keeping assessee awake till the conclusion of search from its initiation which is a most torturous act and under these circumstances the statements of a normal human being like assessee could not be said to be free and voluntarily given statements and it is a serious effort of seizing the human right of a reputed citizen of this country. The human right commission of state of Bihar in the case of Rajendra Singh vide its order in file no/ comp 2665/10 has expressed this view which has been affirmed by Hon'ble Patna High Court, copies of both the orders are enclosed with submissions.



With the above background, it is further submitted as under:

1. That the reply to question No. 25 cannot be seen in isolation only, as has been done in the present case. Reply to question No. 6, 7, 24 and 25 (APB 10-23) should be read together before drawing any conclusion.....-

(APB-13)....

(APB-22)....

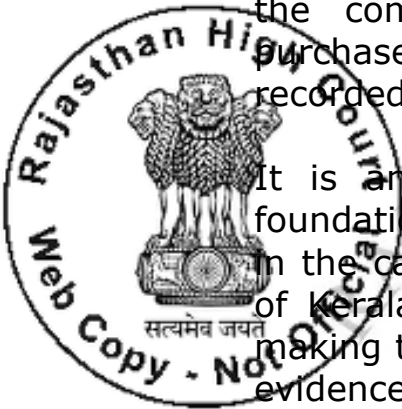
From the perusal of the statements it is clear that at the time of search the books of account maintained by the assessee were incomplete on the basis of which the stock inventory as per books of accounts were taken by the department. Assessee during the course of assessment proceedings has submitted the complete list of inventory alongwith the details of purchases etc. so as to prove that the stock available is duly recorded in the books of accounts (APB 31 to 79).

It is an established law that confession cannot be made foundation of the assessment and the Hon'ble Supreme Court in the case of Pullangode Rubber Products Co . Ltd. V/s State of Kerala reported in 91 ITR 18 has held that if the person making the confessional statement has rebutted the same with evidences such confession could not be made basis for making the additions, therefore the statements given by the assessee cannot be made sole basis for making a huge addition.

2. That with regard to failure to furnish books of accounts and purchase bills are concerned, it is submitted that the assessee had maintained all the required details and books of accounts were also audited as per the requirement of the I.T. Act, 1961. The books of accounts so maintained in the normal course of business were also tendered for verification before the AO as and when desired which is also clear from the reply dated 24.12.2009 (APB 30). Further the confirmation and other details as desired by the Ld. AO vide letters dated 18.12.2009 were submitted vide letter dated 22.12.2009 (APB 81). In fact the assessee has tendered the books of accounts before the Ld. AO who has wrongly observed in the assessment order that no books of accounts were produced for examination.

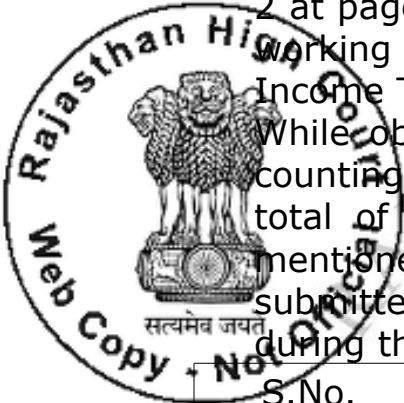
3. With regard to filing of letter of offer of additional income dated 22.12.2009 as submitted above, the Ld. AO has not accepted such offer in toto therefore, it deserves no credence. In this regard reliance was placed by the assessee on the decision of Jaipur bench of ITAT in the case of Kalindee Rail Nirman Engg. Ltd. Vs. JCIT reported in 28 TW 280 wherein it has been held as under:

That counter proposal given by the assessee is not binding on it since it was not acted upon by the AO in its entirety and hence the assessment is not an agreed assessment - Further an assessment cannot be termed as an agreed assessment since it was not consistent with all the terms and conditions of the offer made by the assessee - The instrument cannot be accepted and rejected simultaneously - Whether the principle of estoppel can be applied to statutory right to appeal provided to assessee ? Held No. - Further held that estoppel cannot impede the right of appeal of an assessee.



4. That with regard to excess stock found, it is submitted that at the time of search the books of the proprietorship concerns belonging to assessee and his family members were incomplete. After the search the assessee calculated its actual stock position after duly incorporating all the financial affairs and taking into account all the entries and then stock as per books of accounts was worked out at Rs. 1,20,49,893/- as against the total stock physically found with the assessee at Rs. 1,17,30,918/-.

The Ld. AO did not accepted the stock details of Rs. 1,20,49,893/- as claimed by the assessee by observing in para 2 at page 4 of the order that the stock items as per assessee's working sheet are 781 and as per stock sheet prepared by the Income Tax Department during the course of search are '1402'. While observing so, the Ld. AO has made a serious error of counting the quantity found during search at "1402" by making total of the S.No. mentioned and not counted the quantity mentioned in each single S.No. The actual quantity as submitted by the assessee and as quantify by the department during the course of search are as under: As per Assessee:



S.No.	Name of the firm	No. of items	Total value of stock	APB
1.	Shyam Moorti Emporium	275	1436550.00	31-34
2.	Shyam Exports	402	5364550.00	39-43
3.	Shyam Moorti Kala	688	2429800.00	49-54
4.	Shyam Moorti Museum	484	367658.00	64-65
5.	Shyam Moorti Palace	390	2451335.00	66-72
	Total	2239	12049893.00	

As per Income Tax Department:

S.No.	Name of the firm	No. of items	APB
1.	SFA	626	148-170
2.	SFB	344	187-194
3.	SFC	220	201-206
4.	SFD	251	211-218



5.	A	441	225-226
6.	SMK	113	230-236
	Total	1995	

From the perusal of the above tables your honours would appreciate the fact that the total quantity of the items available with the assessee as on the date of search are more than the physically counted by the search team and such difference is only due to the reason that for eg. 'Ram Mandir' (APB 41 S. No. 111 and APB 169 S. No. 577) was counted as 1 item by the search team however it has been counted as 3 items in the sheet submitted by the assessee. Further in the stock sheets submitted by the assessee it has also included a column containing the relevant reference of the items referred in the list prepared by the search party, therefore, credit of the same should be allowed from the alleged excess stock work out by the department.

5. The condition of not imposing the penalty was not put to avoid any further financial burden by the assessee. The condition of non levy of penalty is not a lawfully invalid condition as the assessee has duly complied with all the conditions laid down u/s 271AAA. However the offer was not accepted by the Ld. AO in totality and therefore the assessee was not under obligation to honour the offer so made.

6. With regard to the observations that no physical inventory of stock has ever been prepared by the assessee and certificate given by the auditors that stock at the year-end has been physically taken by the assessee and valued at lower of cost or net realizable value, it is submitted that the assessee consistently in practice of physically inventoried the stock at end of the every financial year and valued the same at lower of cost or net realizable value which fact is also verified from audit report. In fact, the books of accounts so maintained is normal course of business were also tendered for verification, but the Ld. AO has failed to verify the stock details submitted by the assessee with the books of accounts and purchase bills submitted by the assessee and has not pointed out any single instance where any single item or quantity was not matching with books of accounts or with relevant purchase bills. The results declared in the books of accounts have been accepted and the provisions of section 145(3) of the Income Tax Act, 1961 were not invoked in the case of the assessee. Further the opening stock as declared by assessee was also not doubted by the Ld. AO. Further neither Ld. CIT(A) nor Ld. AO gives specific comment on the reasons of difference of stock of 781 counted by the assessee and 1402 counted by the revenue as pointed out by the assessee. Further, from perusal of stock details (APB 31-79) it is clear that quantity of stock declared by the assessee is more than that physically counted by the search team. The books of accounts maintained by the group were not completed at the time of search and after duly incorporation all the financial affairs and taking into account all the entries the stock counted was excess. It is an established



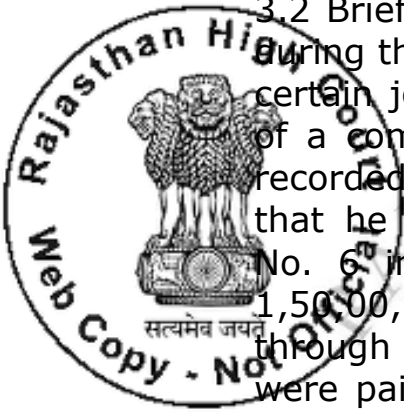
law that the assessee should be given an opportunity to complete the books of accounts found incomplete at the time of search. It is thus submitted that the stock declared by the assessee deserves to be accepted and observation of Ld. CIT(A) regarding nonmaintenance of stock details deserves to be ignored.

With the above back-ground, it is submitted that the no stock was found as in excess and the admission of the assessee being made with stipulation of no penalty proceedings be initiated was not accepted by the department in toto and except the so called admission no material has been brought on record to hold the stock inventory as on the date of search submitted by the assessee in terms of the letter dated 24.12.2009 as manipulated or fabricated or defective in any manner thus in these circumstances, the addition made deserves to be deleted in toto."



2.8 After carefully considering the submission in this regard and perusing the material available on record, we are of the considered opinion that the assessee has been able to explain the difference in stock with sufficient evidences and difference as found during the course of search is not real. At the time of search in the statements recorded, the assessee has categorically stated that the books of accounts of all the firms of the family were incomplete and the stock was lying mixed in the godown. The inventory sheets prepared during the course of search are enclosed at pages 148 to 236 of the assessee's paper book. The detailed working of stock register maintained on day-to-day basis alongwith position of stock in all the proprietary concern of the assessee group as on the date of search as per books of accounts were submitted before the AO vide letter dated 24.12.09 and also tendered the complete books of accounts containing cash book, bank book, ledger for necessary verification. Such a copy of the letter and sheets are enclosed at pages 30 to 79 of assessee's paper book. The AO as well as the Ld. CIT(A) have failed to appreciate these evidences where the total stock in different proprietary concerns of the assessee group comes to Rs. 1,20,49,893/- consisting of total 2239 items in stock as against the total stock physically quantified and valued by the search party at Rs. 1,17,30,918/- consisting of total 1995 items. The discrepancy as referred by the Ld. CIT(A) which was pointed out in the remand report submitted by the AO regarding the total quantity of the items as appearing in the inventory sheets prepared by the assessee and as appearing in the inventory sheet prepared by the search party was due to the fact that certain items having group nomenclature such as Ram Mandir is counted as 1 item by the search team however it has been counted as 3 item in the sheet submitted by assessee. Our attention has also been drawn to few of such examples which after verification we find that the contention of the assessee is correct. The books of accounts tendered by the assessee were also not doubted nor any adverse material have been brought on record to hold that the details submitted by the assessee

were incorrect. From the perusal of the inventory sheet prepared by the assessee, we further find that such sheets contained cross reference of the quantity found and inventoried by the search party therefore, it can be safely inferred that the stock found during the course of search stood considered in the stock inventory available with the proprietary concern of assessee group as on the date of search. Thus in these circumstances, the sustained addition of Rs. 91,44,118/- is directed to be deleted. Accordingly the impugned addition on merit is also not sustainable. Thus the ground Nos. 1 to 3 of the assessee are allowed.



3.2 Briefly stated, the facts giving rise to this ground are that during the course of search a loose paper was found containing certain jottings of cash payments made towards the purchase of a commercial shop in Axis Mall, Jaipur. In the statements recorded during the course of search the assessee admitted that he alongwith his family members have purchased shop No. 6 in Axis Mall, Jaipur for a total consideration of Rs. 1,50,00,000/- out of which Rs. 1,07,38,727/- were paid through cheque and the balance amount of Rs. 57,52,100/- were paid in cash out of which Rs. 15,00,000/- were paid by the assessee and balance were given by Shankar Lal Pandey in whose company such property was purchased. The Ld. AR of the assessee submitted that the assessee has admitted additional income of Rs. 15.00 lacs towards the undisclosed investment in the acquisition of the above stated property and against which a sum of Rs. 17,95,000/- have been declared as additional income as a result of search in different assessment years on this account, therefore, there remained no unexplained investment. The Ld. AR has made written submission the extract of which is verbatim as under:

"As submitted above in grounds of appeal Nos. 1 to 3 that during the search total undisclosed income worked out by the department was Rs. 1,20,20,168/- including a sum of Rs. 28,76,050/- on account of alleged undisclosed investment in the property situated at Axis Mall in the hands of the assessee. The relevant statement of the assessee in this regard is mentioned at page 9 of written submission of the assessee .

(APB-15)....

From the reading of above statement it is quite clear that in the said property the share of the assessee and his family members was 50% only including 20% share of the assessee in whole property. A sum of Rs. 57,52,100/- was to be paid in cash out of the books and assessee has paid Rs. 15,00,000/- in cash as accepted by him in reply to question no. 15 and remaining is paid by Sh. Shankar Lal Pandey.

The assessee while filing his return of income for various assessment years falling under the period as prescribed u/s 153A of the Income Tax Act, 1961 has already included additional income of Rs. 17,95,000/- made on account of the



actual payment made towards the acquisition of the above stated property which is as under:

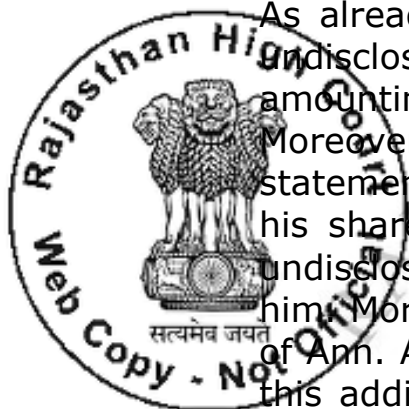
Additional income surrendered in return-

A.Y. 2005-06	= 3,10,000/-
A.Y. 2007-08	= 4,55,000/-
A.Y. 2008-09	= <u>10,30,000/-</u>
Total	= <u>17,95,000/-</u>

From the above facts it is quite apparent that the assessee has already surrendered the amount in preceding years.

Ld. CIT(A) observation in para 5.1 page 19 of his order that, – As already mentioned, the appellant has himself surrendered undisclosed investment in Axis mall being 50% of his share amounting to Rs. 28,76,050/- in his letter dated 22.12.2009. Moreover, the other 50% owner Sh. Shankar Lal Pandey in his statement recorded u/s 132(4) has admitted 50% amount of his share being Rs. 28,76,050/- has been paid by him from undisclosed sources and the same was offered for taxation by him. Moreover same is supported by seized document at page 2 of Ann. A-1, seized from 1994, Khejaron Ka Rasta. Accordingly this addition included in total addition of Rs. 1,03,44,198/- is also sustained and this ground is also rejected., is totally devoid from the fact of the case. As submitted in grounds of appeal No. 1 to 3 above, the offer was based on the figures informed to the assessee and ultimately not binding on the assessee. Moreover assessee himself has accepted Rs. 15,00,000/- as undisclosed income and surrendered Rs. 17,95,000/- in his return i.e. more than what surrendered. Further copy of statement of Sh. Shankar Lal Pandey was not made available to the assessee, which has been made as basis of 50% addition in the hands of the assessee. Even statements recorded of the assessee do not support the contention raised by the revenue.”

3.4 After considering the rival submissions, we have found that the impugned addition deserves to be deleted. Both the authorities below have ignored the fact that the assessee has already declared the additional income of Rs. 17,95,000/- in three different assessment years as detailed above in assessee's submission which include a sum of Rs. 10,30,000/- in the assessment year 2008-09. The amount of additional income declared by the assessee has been accepted by the AO and no adverse comment was made in the assessment order. The assessee against the admission of undisclosed investment of Rs. 15,00,000/- in the statements has declared income of Rs. 17,95,000/-, therefore, there is no occasion to make any further addition more particularly when the amount of Rs. 28,76,050/- stated to have been accepted by the other party i.e. Shankar Lal Pandey in his statements recorded u/s 132(4) on 10-11.01.2008 during the course of search but no such statements were ever confronted to the assessee. Since the assessee has admitted the undisclosed investment of Rs. 15,00,000/- in his statements which has been accepted and due tax thereupon has been paid, in the circumstances we



direct to delete the addition of Rs. 28,76,050/- made separately in the hands of the assessee over and above the amount already declared. Accordingly we order to delete the entire addition. Thus ground No. 4 of the assessee's appeal is allowed. "

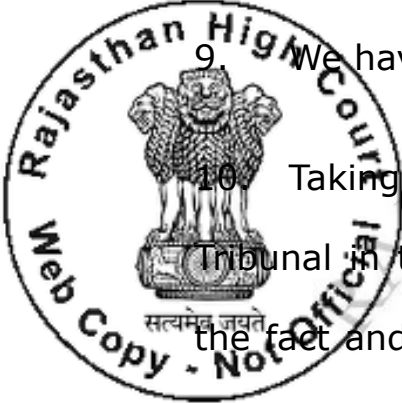
8. He has also relied on the judgment of this court in ITA No. 620/2011(CIT Vs. Shri Satya Narayan Pandey) decided on 31.07.2017.

9. We have heard the learned counsel for the parties.

10. Taking into consideration the observations made by the Tribunal in the above referred para, the Tribunal has appreciated the fact and also considered the stock register and other material produced on record which has been produced today also before us, we are of the considered opinion the Tribunal being a fact finding authority has given its final finding and it will not be appropriate to disturb the same.

11. In that view of the matter, counsel for the appellant has also relied upon order of CIT(A) but Tribunal while considering the matter has appreciated the evidence and we are of the considered opinion that it has not committed any error in deleting the income. More particularly the AO himself has observed that in the previous year the assessee has himself shown his income as reproduced above.

12. The surrender income of Rs. 17,9500/- and assessee stock of Rs. 91,44,118/- is explained by the Tribunal in paragraph 2.7 and 2.8 as stated above.



13. 7. In that view of the matter, the view taken by the Tribunal is required to be confirmed. The issue is answered in favour of assessee against the Department.

8. The appeal stands dismissed.



(VIJAY KUMAR VYAS),J.

(K.S. JHAVERI),J.

S.M.G/Gourav-65



सत्यमेव जयते